

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIMBERLY A. KELLEY,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

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8:06CV431

MEMORANDUM AND ORDER

The plaintiff, Kimberly A. Kelley, has filed a complaint seeking review of a final decision by the Commissioner of Social Security denying the plaintiff's application for benefits under the Social Security Act, as amended. Also before the court is the plaintiff's Application to Proceed in Forma Pauperis ("IFP") (filing no. 4). The plaintiff is permitted to proceed IFP.

Because the plaintiff is proceeding IFP, she is entitled to service of process by the U.S. Marshal, without cost, after the plaintiff completes the appropriate forms. In the alternative, if the plaintiff is represented by counsel, she may make other arrangements for service of process on the defendant.

THEREFORE, IT IS ORDERED:

1. That filing no. 4, the plaintiff's Application to Proceed in Forma Pauperis, is granted;
2. That the Clerk of Court shall send a copy of this order together with three summons forms and three USM-285 forms to the plaintiff's attorney, to be completed in accordance with Fed. R. Civ. P. 4(i) regarding "[s]erving the United States, Its Agencies, Corporations, Officers, or Employees," for service of process on the United States;
3. That if the plaintiff or her attorney decides to have the U.S. Marshal serve the defendant, the plaintiff or her attorney shall, as soon as possible, complete the forms and return the completed forms to the Clerk of Court, as, in the absence of the completed forms, service of process by the U.S. Marshal cannot occur; Fed. R. Civ. P. 4(m) requires service of process by no later than 120 days after the filing of a civil complaint;
4. That upon receipt of the completed summons and 285 forms, the Clerk shall sign the summons forms and forward them, together with copies of the complaint, to the U.S. Marshal for service on the United States;

5. That the Marshal shall serve the United States, without payment of costs or fees; service may be by certified mail in the discretion of the Marshal; and

6. That the defendant shall answer or otherwise respond to the complaint and file the administrative record within the 60-day period prescribed by Fed. R. Civ. P. 12(a)(3).

DATED this 13th day of June, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge

Notice regarding Federal Rule of Civil Procedure 4(i)

Federal Rule of Civil Procedure 4(i) regarding “[s]erving the United States, Its Agencies, Corporations, Officers, or Employees,” states:

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the **United States attorney for the district in which the action is brought** or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney

Michael Heavican, Esq.
U.S. Attorney for the District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68103

and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the **Attorney General of the United States** at Washington, District of Columbia,

U.S. Attorney General
Main Justice Building
10th & Constitution Ave., N.W.
Washington, D.C. 20530

and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to **the officer or agency**.

Jo Anne B. Barnhart
Commissioner of Social Security
6401 Security Blvd.
Baltimore, MD 21235.